

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(214)

CWP-21583-2015

Date of Decision: July 05, 2019

Vinod Kumar Sharma (deceased) through LR's .. Petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Avin Kaur Sandhu, Advocate, for
Mr. Animesh Sharma, Advocate, for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the petitioner is claiming the release of the pensionary benefits, for which he became entitled on attaining the age of superannuation on 31.08.2008, which benefits were being withheld due to the pendency of an FIR No.19 dated 04.03.2003 filed by the Vigilance Department, Punjab. Petitioner claims that as of now he has been acquitted of the said FIR by the competent Court of law on 14.08.2013, he is entitled for the benefit of the release of the pensionary benefits alongwith interest. Further, challenge is to the order dated 12.08.2015 (Annexure P-12) by which, the respondents decided that the period of suspension from 04.03.2003 till 26.04.2007 will be treated as an extraordinary leave.

Facts as mentioned in the writ petition are as under:-

Petitioner, who unfortunately died during the pendency of this writ petition, initially joined the Department of Animal Husbandary as Veterinary Assistant Surgeon on 31.07.1974. His services were regularized on 10.11.1976. While working as such, the petitioner was sent to the Forest

Department on deputation on 01.04.1977 and in the Forest Department, petitioner was appointed as a Deputy Director Zoos on 30.05.1985. The said post was re-designated as a Joint Director on 04.08.1995. While working on the post of Joint Director, petitioner was absorbed in the Forest Department on 04.08.1997. While working as a Joint Director, vide order dated 30.10.2000, he was appointed as a Chief Warden (Zoos). While working on the said post, an FIR No.19 dated 04.03.2003, under Sections 409, 419, 420, 467, 468, 471, 120-B of the Indian Penal Code and under Section 13 (1) (c), (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, was registered at Police Station Vigilance Bureau, Phase 2, Patiala. In the FIR, certain colleagues of the petitioner were also named, who were working with him in the same department.

Keeping in view the registration of an FIR, petitioner was arrested on 04.03.2003 itself and vide order dated 07.05.2003, petitioner was suspended from his service under Rule 4 (2) (B) of the Punjab Civil Services Rules w.e.f the date petitioner was arrested i.e. 04.03.2003. Petitioner was released on bail in June, 2003. Petitioner remained under suspension till 26.04.2007, when petitioner was reinstated vide order dated 26.04.2007 (Annexure P-3), pending the outcome of the legal proceedings. Ultimately, while working as Chief Warden (Zoos), petitioner attained the age of superannuation on 31.08.2008 and retired.

As the proceedings were pending against the petitioner in respect of an FIR No.19 dated 04.03.2003, pensionary benefits of the petitioner were withheld and nothing was paid to him. Ultimately, vide order dated 14.08.2013, the competent Court of law decided the FIR No.19 dated 04.03.2003 and acquitted the petitioner and other officers, against whom the

said FIR was registered. It is highlighted here that one Sh. Gurpal Singh son of Surjan Singh, who was working as a Deputy Director of Chhatbir Zoo, was also arrayed as accused in FIR No.19 dated 04.03.2003. Another persons namely Rajinder Kumar who was working as an Assistant as well as one Sukhdev Singh, who was working as a Wild Life Inspector, were also arrayed as an accused in FIR No.19 dated 04.03.2003. All the accused were acquitted of the charges levelled against them by the competent Court of law by the same order dated 14.08.2013.

After petitioner was acquitted, he made representation to the respondents for the release of the benefits, which were being withheld on account of pendency of the FIR No.19 dated 04.03.2003. Similar representations were also made by the other accused namely Gurpal Singh and Rajinder Kumar. Not only the petitioner requested for the release of the benefits but the other officers, who were also acquitted of the same allegations, made request for the release of their respective retiral benefits after their acquittal. One of the benefit claimed by all the employees, who were acquitted of FIR No.19 dated 04.03.2003 was for treating their suspension period as a duty period for all intents and purposes.

Learned counsel for the petitioner argues that the respondents passed an order in respect of Gurpal Singh, Rajinder Kumar as well as Sukhdev Singh on 02.09.2014, 05.11.2013 and 20.01.2014, respectively treating their suspension period as a duty period after their acquittal from FIR No.19 dated 04.03.2003. In the case of the petitioner, an order was passed by the respondents on 12.08.2015 wherein the suspension period was ordered to be treated as an extraordinary leave thereby denying all the benefits to the petitioner for the period 04.03.2003 till 26.04.2007.

In the present writ petition, the order dated 12.08.2015 has been impugned and a further prayer has been made for issuing the directions to the respondents to release the pensionary benefits to the petitioner for which he became entitled after retirement along with interest.

Upon notice of motion, reply has been filed by the respondents.

In the reply, all the facts which have been stated hereinbefore stands admitted including the fact that three other accused, who were also tried in FIR No.19 dated 04.03.2003 namely Gurpal Singh, Rajinder Kumar and Sukhdev Singh, their suspension period has been treated as a duty period but the respondents are defending their decision stating that the suspension period of the petitioner has rightly been treated as extraordinary leave as the decision to treat the suspension period in any manner, is within the rights of the respondents-State and prayed that the writ petition qua the said relief is liable to be rejected.

In respect of the claim of the petitioner for the release of the pensionary benefits, averments have been made that all the benefits for which the petitioner is entitled for, have already been released. It has been further stated that even the revised pay scale has been given to the petitioner in pursuance to the revision, which took place w.e.f. 01.01.2006 onwards. Relevant portion of the reply of the respondents-State is as under:-

“2. That in reply to this para, it is submitted that FIR bearing No. 19 dated 04.03.2003 was got registered against the petitioner under Section 409, 419, 420, 467, 468, 471 and 120-B of Indian Penal Code and under Section 13(1) (c) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 at Police Station, Vigilance Bureau, Patiala. The allegations in the FIR were that the petitioner in connivance with the other

accused had been purchasing meat, fodder and eatables of inferior quality for zoo animals and misappropriated public funds. After the registration of the above mentioned FIR the petitioner was arrested on 04.03.2003 and he remained in police custody under police remand upto 08.03.2003 and released on bail subsequently on 04.06.2003. On the basis of above mentioned case, the petitioner was suspended from the date of his arrest i.e. 04.03.2003 under Rule 4(2) of the Punishment and Appeal Rules, 1970 vide Punjab Government, Forests and Wildlife Preservation Department order dated 07.05.2003. The petitioner was reinstated subject to final outcome of the pending judicial proceedings against him vide Punjab Government order dated 26.04.2007. Thus the petitioner remained under suspension with effect from 04.03.2003 to 26.04.2007. The petitioner was retired on 31.08.2008 after attaining the age of superannuation at 58 years vide Punjab Government order No. 13/7/2008-Ft.1/7761 dated 27.08.2008. The provisional pension amounting to Rs. 12,144/- was granted to the petitioner by Respondent No. 3 under Rule 9.4 of Civil Services Rules Volume-II w.e.f. 01.09.2008 as per the advice given by the State Government vide its letter No. 13/7/2008-Ft-1/2932 dated 26.03.2009. The pay of the petitioner was fixed in the revised pay scale of Rs. 37400-67000+8900 as per the fitment table 31 with effect from 27.04.2007 to the tune of Rs. 49,790/- by Respondent No. 3 vide office order No. 209 dated 13.11.2009 as per the notification issued by the Finance Department No. 5/10/09-5FPI/207 dated 27.05.2009 on the recommendations of the 5th Pay Commission. On the basis of revised basic pay, the provisional pension of Rs. 22,632/- was enhanced from Rs. 12144/- vide Principal Chief Conservator of Forests (HoFF) O/o No. 148 dated 02.07.2013 subject to the following conditions:-

The grant of provisional pension shall be without prejudice to:-

- a. The outcome of the decision of the court in the case FIR No. 19 of 2003.*
- b. The decision on the dispute raised by Smt. Brij Mohini through her brother Sh. Raj Kumar Ranga S/o Sh. Uday Chand Ranga in his legal notice dated 15.09.2008 claiming pensionary/services benefits as a legal wedded wife of the retiree.*

It is further submitted that the petitioner is trying to mislead the Hon'ble Court by stating that no retiral benefits due to him were given by the respondents. In fact, the following retiral benefits have already been released to the petitioner:-

- (i) Rs. 15,90,148/- of final payment of G.P.F. was released vide Principal Chief Conservator of Forests (HoFF), Punjab letter No. 17044-45 dated 17.09.2008.*
- (ii) Provisional pension is being paid regularly to the petitioner from the date of his retirement. A provisional pension statement from 01.09.2008 has been sent to Treasury officer, Mohali and Chandigarh for releasing Final pension.*

Now the following pensionary benefits have also been sanctioned to the petitioner and bills raised to the District Treasury Officer, Mohali for releasing the payment.

- (i) Rs. 8,66,340/- as Death-cum-retirement Gratuity after the approval of Accountant General, Punjab vide their letter no. PEN-2/2181541419/2015-16/PE/15/10/ 80086750 dated 13.10.2015 was sent to Treasury Officer, Mohali for payment to the petitioner vide Bill No. 352 dated 04.11.2015.*
- (ii) Order of Leave Encashment of Rs.5,77,560/- has been issued vide Principal Chief Conservator of Forests (HoFF) office order No. 147 dated*

26.11.2015 and the same has been sent to the Treasury Officer, Mohali for payment to the petitioner vide bill No. 410 dated 08.01.2016.”

Now the dispute in the present writ petition is restricted as to whether the action of the respondents in treating the suspension period of the petitioner as an extraordinary leave in the facts and circumstances of the present case is a valid action or not and further, whether the petitioner is entitled for the grant of interest on the delayed release of payments.

I have heard learned counsel for the parties and gone through the record with their able assistance.

With regard to the challenge of the petitioner to order dated 12.08.2015 (Annexure P-12), by which the suspension period of the petitioner has been treated as an extraordinary leave, learned counsel for the petitioner argues that the same is discriminatory in nature as suspension period of the similarly situated employees, who were also accused along with the petitioner in the same FIR, has been treated as a duty period by the respondents.

Learned counsel for the petitioner argues that no point has been given in the impugned order, which differentiate the case of the petitioner from the other accused so that the respondents can claim that it is within their jurisdiction to take a different decision in respect of petitioner's suspension period, as taken by them while deciding the case of other similarly situated employees, by which their suspension period has been treated as duty period for all intents and purposes.

Learned counsel for the respondents, on the other hand, defends the impugned order dated 12.08.2015 (Annexure P-12) by relying upon Rule 7.3 (B) of the Punjab Civil Services Rules i.e. the Rule under which action is

to be taken by the respondents-State in respect of the suspension period after an employee is reinstated. The said Rule is reproduced hereunder for the ready reference:-

7.3-B. (1) When a Government employee who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order

(a) regarding the pay and allowance to be paid to the Government employee for

the period of suspension ending with re-instatement or the date of his

retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 7.3 or rule 7.3-A, where a Government employee under suspension dies before the disciplinary or court proceedings instituted against him, are concluded, the period between the date of suspension and the date of death shall be treated as spent on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee, had been delayed due to reasons directly attributable to the Government employee, it may,

after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government employee shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government employee shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government employee so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the

Government employee.

***Note.**—The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of—*

(a) extraordinary leave in excess of three months in the case of temporary Government employee; and

(b) leave of any kind in excess of five years in the case of permanent Government employee.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2.”

A bare perusal of the Rule reproduced above would show that where the suspension period was found to be unjustified, an employee will be entitled for full pay and allowances for the said period. In the case, where an employee has been held guilty of the charges, the competent authority has the right to decide the suspension period keeping in view the facts and circumstances of that particular case. It is an admitted position that three other employees who were also arrayed as accused in the same FIR along with the petitioner and were ultimately exonerated by the same order by the competent Court of law on 14.08.2013 considering their cases under the same provision i.e. Rule 7.3-B, the same authority has passed an order treating their suspension period as a duty period. Once, under same Rule, a similarly situated employee has been given the benefit of treating their suspension period as a duty period, how can the petitioner be discriminated for the grant of the same benefit. Nothing has been pointed out as to how the case of the petitioner is different from Sh. Gurpal Singh, Rajinder Kumar

and Sukhdev Singh so as to entitle the respondents to take a different view for treating the suspension period as an extraordinary leave. In the absence of any cogent reason, which differentiate the case of petitioner with that of other similarly situated employees, the respondents were liable to grant the same benefit to petitioner, as granted to all the other similarly situated employees. Therefore, the order dated 12.08.2015 (Annexure P-12) is not only discriminatory but is also contrary to Rule 7.3 (B) as in the present case, the petitioner was exonerated by the competent Court of law of the allegations, which were alleged against the petitioner and similarly situated employees and therefore, order dated 12.08.2015 (Annexure P-12) is liable to be set aside and is set aside accordingly.

As per the settled principle of law, keeping in view Articles 14 and 16 of the Constitution of India, two similarly situated persons cannot be discriminated even for the grant of punishment. Employees who are similarly situated, are to be treated equally in all respect whether the grant of benefit of appointment, promotion or even for taking any decision under the provisions of Rules in respect of their services. Hon'ble Supreme Court of India while deciding **Civil Appeal No.1334 of 2013 titled as Rajendra Yadav Vs. State of M.P. and others, decided on 13.02.2013**, held as under:-

“12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority

cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

*13. The principle stated above is seen applied in few judgments of this Court. The earliest one is [Director General of Police and Others v. G. Dasayan](#) (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate [Article 14](#) of the Constitution of India. In *Shaileshkumar Harshadbhai Shah* case (*supra*), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.*

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service

imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re- instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.”

This Court while deciding CWP No.5963 of 2014 titled as Constable Sanjay Kumar Vs. State of Haryana, on 21.07.2016 with regard to the grant of appointment, held as under:-

“11. Perusal of the impugned order would reveal that the same is bereft of any reasoning which would justify the rejection of the claim of the petitioner seeking ante dated appointment to the post of Constable w.e.f. 27.10.2004. The impugned order has been passed while dealing and disposing of a representation dated 3.9.2013 (Annexure P-4). In this very representation the instances of identically situated Constables had been furnished and it had been specifically averred that they have been granted the benefit of ante dated appointment w.e.f the year 2004. Such contention has not even been noticed much less dealt with in the impugned order. Orders passed by administrative authorities dealing with the rights of the employees have to be speaking orders and by assigning reasons. The impugned order dated 11.12.2013 (Annexure P-9) would not survive on account of such infirmity alone.

12. The objection raised by learned State counsel as regards Ramesh Kumar son of Budh Ram having been granted the requisite benefit only on account of directions having been issued by the Writ Court and on the other hand the writ petition filed by the petitioner having been disposed of only to re-consider the matter is a frivolous objection. Employees, who are identically situated have to be meted out similar treatment. Such aspect has been ignored by the D.G.P., Haryana while passing the

impugned order dated 11.12.2013 (Annexure P-9). ”

Further, this Court while deciding **CWP No.18176 of 1991 titled as Punjab State Coop. Supply and Marketing Federation Ltd. Vs. Ashok Kumar Mehta, on 21.03.2011**, held as under:-

“19. Ex facie, the argument of learned counsel for Markfed that workman Ashok Kumar Mehta is not entitled to the same treatment as he approached the Labour Court, is not only devoid of merit but misplaced as well. If this argument is accepted, then it will amount to discrimination in awarding the punishment to the present workman for the same misconduct by the same punishing authority and will be violative of Articles 14 and 16 of the Constitution of India, particularly when both the officials contributed equally in their alleged misconduct. Moreover, the same punishing authority (Markfed) cannot legally be permitted to blow hot and cold in same breath in this relevant connection.

20. Sequelly, this matter can be viewed from a different angle. Once Roop Singh, co-employee of the present workman, was exonerated from recovery, reinstated in service and was only awarded the penalty of stoppage of two increments, then the present workman is also legally entitled to the same treatment by the same punishing authority on account of same misconduct on the basis of principle of 'stare decisis' and Articles 14 and 16 of the Constitution of India.”

This Court while deciding **RSA No.4608 of 2015 titled as Parveen Kumar Vs. State of Haryana, decided on 27.04.2017**, held as under:-

“12. If this principle is to be upheld with eyes shut, then there will be a further invidious and hostile bifurcation among a homogeneous class of discharged

probationers who have been reinstated and they can be treated differently in the same police force. This means that there will be intra class discrimination between the probationers and the appellants and regular police officials who were involved in the same incident which has been pardoned by the State in a compromise reached between the Haryana Police Sangathan and the State Government. This is like standing on a beach looking to the heavens and not the horizon. The procedural milestones in the departmental enquiry are like the waves on a beach, while the relief lies in the distant horizon with a rainbow connecting the rights of the plaintiffs, their own peer group of probationers in other districts who were also dismissed and returned with 50% back wages and the regular officials who have been treated differently and more advantageously. Thereby making Kurukshetra an island in the State of Haryana. Even in the matter of punishments, the provisions of Article 14 of the Constitution of India are applicable and it would be an abdication of constitutional duty in the court, that is, to uphold the Constitution and the laws.

13. I have therefore no hesitation in accepting this appeal by applying the principle of equal treatment to avoid violation of Article 14 of the Constitution of India of those who are similarly circumstanced and must suffer discriminatory treatment inter-districts in the Haryana police department.”

From the above, it is clear that two similarly situated persons cannot be treated differently while considering their cases for the grant of benefit under the same provisions of law. In case, the same is done by the authority without any valid justification or any cogent reason, the same amounts to discrimination. Discrimination of similarly situated persons is not permitted keeping in view Articles 14 and 16 of the Constitution of India

which provisions have been interpreted by the Hon'ble Supreme Court of India as well as this Court more than once. Therefore, petitioner has to be treated at par with other employees namely Gural Singh, Rajinder Kumar and Sukhdev Singh in respect of treating the suspension period.

Petitioner is held entitled to be treated similarly with other employees for treating the suspension period and also for the grant of the same benefit as granted to the other three similarly situated employees wherein, their suspension period has been treated as a duty period for all intents and purposes.

The other claim, which the counsel for the petitioner has raised is for the grant of interest on the delayed release of the pensionary benefits. Under the Punjab Civil Services Rules, only the gratuity and the leave encashment could be withheld by the respondents in respect of an employee against whom either the departmental or criminal proceedings are pending. No other benefit such as pension, provident fund can be retained by the respondents on the ground that the disciplinary proceedings is pending against an employee. A Full Bench of this Court in **LPA No.113 of 2012 titled as Punjab State Civil Supplies Corporation Ltd. and others Vs. Pyare Lal decided on 11.08.2014**, while interpreting the Punjab Civil Services Rules, has held that no benefit except gratuity and the leave encashment can be withheld after an employee has superannuated against whom either the disciplinary proceedings or the proceedings before the criminal Court are pending. The relevant paragraph of the said judgment is as under:-

“9. In view of thereof, we find that the ratio laid down in the said judgments cannot be extended in respect of the claim of leave encashment governed by the Punjab Civil Service Rules or the analogous Rules. In fact, in terms of

the conclusion (i) in para No. 81 of the judgment in Dr. Ishar Singh's case (supra), the State Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100% pension at the time of superannuation. It is conclusion No. (ii) which permits the Government to withhold gratuity or other retiral benefits. The pension is to be paid, may be provisionally, during the pendency of the enquiry. Similarly, conclusion (vii) provides recovery of Government dues from gratuity and other retiral dues. Therefore, the judgment in Dr. Ishar Singh's case (supra), is applicable only in respect of payment of provisional pension pending disciplinary or criminal proceedings and has no applicability in respect of withholding of other retiral benefits. The payment or withholding of other retiral benefits is subject matter of applicable Rules, if any. Since in the present case, Rule 8.21(aa) provides for withholding of leave encashment, the same cannot be released to an employee, as the amount, if any, could be recovered from such benefits.

*10. In fact the above view gets support from the recent Supreme Court Judgment reported as **State of Jharkhand v. Jitendra Kumar Srivastava, 2013(4) S.C.T. 429 : (2013) 12 SCC 210**, wherein the court held as under:-*

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300A of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law.--No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be

deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different."

11. In view thereof, since the right to withhold leave encashment is part of the Statutory Rules, it satisfies the test laid down by the Supreme Court. Thus, we approve the judgment in Harbhajan Singh Riar's case while overruling the view taken in Gurdial Singh's case (supra). The judgments in two other cases i.e. B.S. Gupta's case (supra) and Dayal Singh's case (supra), pertain to Haryana. Since, the Rules applicable to Haryana, have not been brought to our notice, we leave the said matter open, to be adjudicated at an appropriate stage."

Counsel for the respondents is unable to dispute the proposition of law that all the benefits for which an employee is entitled after superannuation, cannot be withheld.

Learned counsel for the respondents states that the benefit of provident fund was immediately released to the petitioner after his

retirement in the year 2008 and therefore, the question of grant of interest does not arise.

Similarly, counsel for the respondents states that even the provisional pension was being paid to the petitioner and therefore, no grievance can be raised by the petitioner in this regard. Only the benefits of gratuity and leave encashment were withheld and the respondents were well within their right under the Rules and also in accordance with the judgment of the Full Bench, to withhold the gratuity and the leave encashment till the decision of the proceedings, which were pending against the petitioner. He further submits that after the petitioner was acquitted in August, 2013, the benefits for which the petitioner was entitled for such as leave encashment and the gratuity, were released to the petitioner on 08.01.2016 and 13.10.2015 respectively and therefore, the petitioner is not entitled for any interest on the same.

Learned counsel for the petitioner argues that once the petitioner was acquitted by the competent Court of law on 14.08.2013, benefit of leave encashment and gratuity should have been released within a period of two to three months thereafter but the same were released in November, 2015 and January, 2016 and there is an inordinate delay in the release of the same and there is no valid justification for retaining the amount beyond three months from the date of acquittal of the petitioner in August, 2013.

As per the settled principle of law settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab, 1997(3) S.C.T. 468**, it has been held that an employee is entitled for the release of the pensionary benefits within a reasonable time after his retirement unless and until there is

an impediment in the release of the same. The relevant portion of the said judgment is as under:-

“Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanbhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

Reasonable time as envisaged by the Full Bench of this Court of two months will also be applicable in the cases of petitioner, where an employee becomes entitled for the benefit after the impediment is removed. In the present writ petition, the impediment due to which the gratuity and leave encashment of the petitioner was withheld i.e. FIR No.19 dated 04.03.2003, was decided on 14.08.2003 and petitioner was acquitted. The respondents were under obligation to release the benefits within a reasonable time of two months as they had decided not to file an appeal against the said order vide which the petitioner was exonerated.

Further a Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782**, has held that where an amount for which an employee was entitled for, has been retained by the respondents and used, employee will become entitled for interest. The

relevant paragraph of the said judgment is as under:-

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

The case of the petitioner is covered for the grant of interest on the basis of settled principle of law, mentioned hereinbefore.

Petitioner is held entitled for interest @ 9% per annum from 01.11.2013 onwards on the gratuity and leave encashment till the same were actually released to the petitioner. Let the interest be calculated by the respondents within a period of two months from the receipt of copy of this order. Consequential benefits for which the petitioner will become entitled for after treating his suspension period as duty period, benefit which has been given to the other similarly situated personnel, such as Gurpal Singh, Rajinder Kumar and Sukhdev Singh, should also be given to the petitioner within a period of two months from the receipt of copy of this order.

The writ petition is allowed in above terms.

The benefits shall be given to the legal heirs, who according to the rules and regulations, are entitled for the same, as it is stated by learned counsel for the respondents that there is a dispute with regard to the legal heirs.

Learned counsel for the petitioner states that the said dispute

already stands finalized in another proceedings and it has already been decided that which legal heir will be entitled for the pensionary benefits for which the petitioner was entitled for.

July 05, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes